

G-999/CI-90-40 ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of Take-Or-Pay Buy-
Out/Buy-Down Costs Incurred By
Interstate Natural Gas Pipelines

ISSUE DATE: April 16, 1991

DOCKET NO. G-999/CI-90-40

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PROCEDURAL HISTORY

On January 25, 1991, the Commission issued its ORDER AUTHORIZING THE RECOVERY OF TAKE-OR-PAY SETTLEMENT COSTS. In this Order the Commission reviewed 1) the circumstances leading to the formation of take-or-pay (TOP) contracts, 2) the expenses incurred by Minnesota's largest natural gas pipeline, Northern Natural Gas (Northern) to get out of those contracts (TOP settlement costs) and 3) Northern's authority from FERC to pass on those costs to their customers (local distribution companies or LDCs) through a volumetric surcharge on all throughput. The Commission then considered the current practice of the LDCs in passing Northern's TOP surcharges on to their (the LDCs') customers through the purchased gas adjustment (PGA) affecting all their retail customers. The Commission analyzed and rejected the objections to the practice raised by the Minnesota Industrial Customers (MIC). Based on this analysis, the Commission approved the practice and authorized the LDCs to continue this practice.

On February 14, 1991, the Northern Distributor Group (NDG), a coalition of local distribution companies (LDCs) in Minnesota, filed a Petition for Rehearing, Reconsideration and Clarification of the Commission's January 25 Order. The NDG requested that the Commission eliminate from the Order the discussion of its jurisdiction. The NDG argued that until the Commission has before it a specific factual situation where LDC absorption of TOP costs is litigated, it should not speculate as to its jurisdictional parameters.

On February 25, 1991, the Minnesota Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD/OAG) filed joint answer to NDG's petition. The Department and the RUD/OAG opposed reconsideration, arguing that the Commission had correctly limited its expression of jurisdiction to the facts of the case.

On March 5, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The NDG objects to the discussion in the Commission's Order relating to Commission jurisdiction to require LDCs to absorb a portion of the TOP volumetric surcharge that Northern imposed on the LDCs. The NDG expressed the fear that because of the language in the January 25, 1991 Order, the issue of the Commission's jurisdiction in this area would be deemed to have been decided. The question of jurisdiction in this area is complex due the issue of federal pre-emption and is directly dependent on the facts of each case. Although the Commission's invocation of jurisdiction in the case at hand is correct, it is properly limited to the facts of this case. In any future case raising this question, the Commission will analyze the facts of the case and determine its jurisdiction based on those facts. Hence, the NDG's concern that the Commission's limited findings on jurisdiction in this case will create binding precedent in another case with different facts is ill founded.

Accordingly, the Commission finds no need to reconsider its January 25, 1991 Order and will deny NDG's request for reconsideration.

ORDER

1. The Northern Distributor Group's Petition for Rehearing, Reconsideration, and Clarification of the Commission's January 25, 1991 Order in this matter is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)